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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,496	06/24/2003	Gil Elnatan	32209/3	2220
1912	7590	09/17/2004	EXAMINER	
AMSTER, ROTHSTEIN & EBENSTEIN 90 PARK AVENUE NEW YORK, NY 10016			MILLER, WILLIAM L	
		ART UNIT	PAPER NUMBER	
		3677		

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/602,496	ELNATAN, GIL
Examiner	Art Unit	
William L. Miller	3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 24 June 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-7 is/are rejected.

7)  Claim(s) 8 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03182004.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 4-8 are objected to because of the following informalities: claim 4, line 7, change “.” to ----; claim 4, line 13, change “,” to ----; claim 5, line 3, change “a” to --said--; claim 5, line 4, the phrase “said time capsule” lacks antecedent basis; claims 6 and 7, line 1, after “grave” insert --time capsule--; claim 8, line 2, change “graves” to --grave time capsules--; and claim 8, line 3, change “a” to --said--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rojas (US#5729921) in view of Yamamoto (US#5987720).

4. Regarding claims 1-3 and 5, Rojas discloses physical remains including cremated ashes of a deceased person (col. 4, lines 15-20); an inherent memory device containing digitized data on the biographical history of the deceased enabling video playback of the deceased on display 52; and a time capsule 12, sealable via 14, to contain the physical remains and digitized data.

5. Rojas fails to disclose the physical remains including DNA material which is removable from the capsule as claimed by the applicant. Yamamoto discloses physical remains including DNA material 14 which is removable from a capsule 10 to facilitate the resurrection of the deceased. Therefore, as taught by Yamamoto, it would have been obvious to one of ordinary

skill in the art at the time the invention was made to modify Rojas by including DNA material which is removable from the capsule to facilitate the resurrection of the deceased.

6. Rojas fails to disclose a communication terminal as claimed by the applicant. Yamamoto discloses a time capsule 10 including a communication terminal 26 for accessing, uploading, and downloading digitized data to/from a memory device 24 for memorialization purposes.

Therefore, as taught by Yamamoto, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rojas by including a communication terminal for accessing, uploading, and downloading digitized data to/from the memory device to enhance the memorialization of the deceased.

7. Although Rojas as modified by Yamamoto fails to specifically disclose the claimed method steps, Rojas as modified by Yamamoto does disclose all the claimed structure required to perform the method steps. Thus, it would have been obvious to one of ordinary skill in the art to utilize the claimed method steps as under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification, it can be assumed the device will inherently perform the same process. *In re King*, 802 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

8. Regarding claim 4, Rojas discloses a portable grave time capsule comprising: a container 12 sealable via a lid 14; a partitioned inner receptacle 20 (col. 4, lines 15-20) providing first and second chambers capable of containing cremated ash and DNA material, respectively; and an inherent memory device capable of containing digitized data related to the deceased for display via 52.

9. Rojas fails to disclose a communication terminal as claimed by the applicant. Yamamoto discloses a portable grave time capsule 10 including a communication terminal 26 capable of downloading data to a computer and for uploading other data into a memory device 24 for memorialization purposes. Therefore, as taught by Yamamoto, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Rojas by including a communication terminal capable of downloading data to a computer and for uploading other data into the memory device for enhanced memorialization of the deceased.

10. The cremated ash, DNA, digitized data, computer, and other data are not being positively claimed by the applicant.

11. Regarding claim 6, Rojas discloses the container dimensions as 28"x16"x18" which are being viewed as "approximately" 3 5/8"x 2 5/8"x1". In any event, the applicant is reminded a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

12. Regarding claim 7, the communications terminal taught by Yamamoto is capable of being linked to a similar grave time capsule of a different deceased person for transferring digitized data from one capsule to the other. The similar capsule is not being positively claimed by the applicant.

***Allowable Subject Matter***

13. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

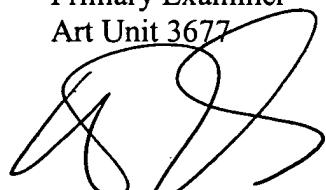
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is 703 305 3978. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703 306 4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William L. Miller  
Primary Examiner  
Art Unit 3677



WLM  
09-15-2004